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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/980,549

04/05/2002

Tommi Koistinen

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EXAMINER

WOZNIAK, JAMES S

ART UNIT

PAPER NUMBER

2626

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/980,549	<b>Applicant(s)</b> KOISTINEN, TOMMI	
	<b>Examiner</b> James S. Wozniak	<b>Art Unit</b> 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. In response to the office action from 5/14/2007 the applicant has submitted an amendment, filed 8/14/2007, amending independent claim 1, while arguing to traverse the art rejection based on the limitations regarding method/system implementation in a packet network and a codec having higher priority than a data modem (*Amendment, Pages 6- 7*). Applicant's arguments have been fully considered, however the previous rejection is maintained due to the reasons listed below in the response to arguments.

### *Response to Arguments*

2. Applicant's arguments have been fully considered but they are not persuasive for the following reasons:

With respect to **Claims 1, 4, and 9**, the applicant first argues that Suzuki et al (*U.S. Patent: 5,495,610*) fails to teach system/method implementation in a packet network (*Amendment, Page 6*). In response the examiner notes that it is Yletyinen ("*The Quality of Voice Over IP*," 1998) that provides such a teaching in the form of VoIP, which involves the use of a packet network (*Section 1.1, Page 2*). Additionally, in response to these arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413,

208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The applicant further argues that Yletyinen teach a degradation in an order of “video, data, and audio”, and thus, assigns a lesser priority to audio data (*Amendment, Page 7*).

In response the examiner notes that the teachings of Yletyinen are opposite to the aforementioned argument. In this case, degradation is not referring to degradation as a result of network transmission, but degradation in terms of a lowering of priority. Specifically Yletyinen teaches that in response to network congestion conditions, different data types are degraded or given a lesser priority. As can be seen in Yletyinen, audio data is degraded last or given a greater priority than other data types (*Section 3.3.2, Page 42*). Thus, the examiner notes that Yletyinen teaches “providing a codec with a higher priority than a modem”.

The rejection of the dependent claims is traversed for reasons similar to claims 1, 4, and 9 (*Amendment, Page 7*). In regards to such arguments, see the above response directed towards claims 1, 4, and 9.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1, 2, 4-5, and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al (*U.S. Patent: 5,493,610*) in view of Yletyinen ("*The Quality of Voice Over IP,*" 1998).

With respect to **Claims 1, 4, and 9**, Suzuki discloses:

A transceiver means being operable with variable transfer rates (*means for controlling a data transmission rate, Col. 4, Lines 41-62*);

A detecting means for detecting the load upon a network circuit (*means for determining a load status of a transmission circuit, Col. 6, Lines 1-12; and Col. 10, Lines 61-65*);

A control means for adjusting the transfer rate of the transceiver means in response to the detected load (*means for designating a transmission rate of a data signal, Col. 6, Lines 1-12; and Col. 10, Lines 61-65*);

Characterized in that:

The transceiver means comprises a modem for modulating and demodulating of non-speech data (*modem for use with facsimile-related data, Col. 4, Lines 41-62; Col. 6, Lines 35-35; and Fig. 1, Element 5*) and a codec for encoding and decoding of speech data (*speech encoder/decoder Col. 4, Lines 41-62; and Fig. 1 Elements 7 and 13*).

Suzuki does not teach adjusting multiple transmission rates according to multiple priorities, wherein a speech codec has a higher priority than non-speech data. Suzuki also does not disclose device implementation in a VoIP gateway disposed between a plurality of networks. Yletyinen, however, discloses a VoIP gateway capable of decoding and encoding speech for voice over Internet protocol, which contains multiple transmission/receiving means corresponding to telephone and IP networks for the reception/transmission of speech and other

non-speech data types (*Fig. 2-3; and Section 2.5, Page 8*). Yletyinen also discloses that the VoIP gateway is capable of adjusting a frame transmission rate in order to respond to congestion, wherein audio (*i.e., speech*) data rates receive priority over the rates for other types of data (*Section 3.3.2, Page 42*).

Suzuki and Yletyinen are analogous art because they are from a similar field of endeavor in congestion-based transmission rate adaptation. Thus, it would have been obvious to a person of ordinary skill in the art, at the time of invention, to modify the teachings of Suzuki with the VoIP gateway taught by Yletyinen in order to provide a system for cost-effective voice transmission that allows communication between users of different networks that is capable of responding to varying congestion conditions (*Yletyinen, Pages 6 and 42*).

With respect to **Claims 2 and 5**, Suzuki further discloses:

The transceiver means comprises a plurality of predetermined transfer rates and the control means is adapted to select one of the predetermined transfer rates in response to the detected load (*multiple transmission rates, Col. 6, Lines 55-67; and transmission rate designation, Col. 6, Lines 1-12*).

5. **Claims 3 and 6-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al (*U.S. Patent: 5,493,610*) in view of Yletyinen and further in view of Chang et al (*U.S. Patent: 5,367,523*).

With respect to **Claims 3 and 6-8**, Suzuki in view of Yletyinen discloses the congestion control VoIP gateway as applied to Claims 1, 4-5, and 9. Suzuki in view of Yletyinen do not

explicitly disclose measuring a round trip of a test packet in order determine a network load, however Chang discloses:

Sending a test packet to a predetermined destination over the network, receiving the test pack back from the predetermined destination and analyzing the occurring delay in order to determine the load on the network (*determining network congestion based on a round trip delay of a rate feedback request sample packet, Col. 7, Lines 46-56; and Col. 10, Lines 29-38*).

Suzuki, Yletyinen, and Chang are analogous art because they are from a similar field of endeavor in congestion-based transmission rate adaptation. Thus, it would have been obvious to a person of ordinary skill in the art, at the time of invention, to modify the teachings of Suzuki in view of Yletyinen with the delay detection means taught by Chang in order to provide a convenient means for dynamically tracking network congestion (*Chang, Col. 7, Lines 46-56*).

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Wozniak whose telephone number is (571) 272-7632. The examiner can normally be reached on M-Th, 7:30-5:00, F, 7:30-4, Off Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Edouard can be reached at (571) 272-7603. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James S. Wozniak  
10/23/2007



PATRICK N. EDOUARD  
SUPERVISORY PATENT EXAMINER